

VIRGINIA V. DEVLIN

IBLA 82-1343

Decided May 2, 1983

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application NM 51447.

Affirmed.

1. Oil and Gas Leases: Applications: Sole Party in Interest

A simultaneous oil and gas lease application must be rejected if it contains the names of additional parties in interest and, within 15 days of the filing, the applicant fails to submit a statement signed by herself and the other interested parties setting forth the nature of their respective interests and a copy of agreements between them.

2. Oil and Gas Leases: Applications: Drawings

A simultaneous application given priority which is defective because of noncompliance with a mandatory regulation must be rejected and may not be cured by the submission of further information.

APPEARANCES: Virginia V. Devlin, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Virginia V. Devlin appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated August 25, 1982, rejecting her simultaneous oil and gas lease application NM 51447 for failure to comply with 43 CFR 3102.2-7 (45 FR 35162 (May 23, 1980)), regarding other parties in interest. Appellant's oil and gas lease application was drawn with third-priority for parcel NM 772 in the drawing held in the New Mexico State Office on December 17, 1981. BLM rejected the application for the following reasons:

Virginia V. Devlin stated on the simultaneous oil and gas lease application (Form 1112-1) that Wm. Devlin is another party in interest.

Also, on the application Virginia V. Devlin answered yes to the question (d) Does any party, other than the applicant and these identified herein as other parties in interest, own or hold any interest in this application, or the offer or lease which may result? (See copy of application attached).

Compliance was not made with Regulations 43 CFR 3102.2-7 which states: (b) "A statement, signed by both the offeror or applicant and the other parties in interest, setting forth the nature of any oral understanding between them, and a copy of any written agreement shall be filed with the proper BLM office not later than 15 days after the filing of the offer, or application if leasing is in accordance with subpart 3112 of this title. Such statement or agreement shall be accompanied by statements, signed by the other parties in interest, setting forth their citizenship and their compliance with the acreage limitations of Subpart 3101.1-5 and 3101.2-4 of this title."

BLM added that upon searching the records and attachments for November 1981, appellant's statements were not found to have been filed.

In her statement of reasons, appellant states that William Devlin is her husband and that they are the only participants in the application. Appellant says that any answer on the application indicating otherwise is in error. Appellant and her husband submitted affidavits with appellant's appeal to support these contentions.

[1] It is well established that failure to comply with 43 CFR 3102.2-7(b), requiring the submission of certain information regarding other parties in interest, must result in rejection of the application. Bob Reid, 64 IBLA 17 (1982); Richard M. Sporcic, 62 IBLA 159 (1982); Lawrence E. Dye, 57 IBLA 360 (1981). Appellant named her husband as another party in interest but did not submit the statements as required by 43 CFR 3102.2-7(b). Therefore, her application must be rejected.

In her affidavit appellant states that in all the years of their marriage, she and her husband have never had a written or oral agreement as to investment activity. She says, "We just have a complete understanding that we share in such matters." This statement may indicate that her husband was not a party in interest and it may not have been necessary to list him as such on her application. However, this cannot retroactively excuse an applicant. See Richard M. Sporcic, *supra* at 160; Timothy G. Lowry, A-30487 (Mar. 16, 1966).

[2] Appellant's statements on appeal explaining her husband's participation in the offer are to no avail. Noncompliance with 43 CFR 3102.2-7(b), a mandatory regulation, results in rejection of the application. Under the simultaneous filing procedure an applicant may not "cure" the defects in her application by the submission of additional information after the drawing.

Richard M. Sporcic, supra; Southern Union Production Co., 22 IBLA 379, 382 (1975); Manhattan Resources, Inc., 22 IBLA 24, 26 (1975), and cases cited. See 43 CFR 3112.6-1. Giving an unqualified priority entrant additional time to file curative material is not permitted. See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067, 1070 (10th Cir. 1976).

Also, appellant answered "yes" to question (d) indicating that there was another party, other than herself and husband, who owns or holds an interest in the application, or offer or lease which may result, but she did not file the statements required by 43 CFR 3102.2-7(b). Appellant indicates on appeal that the "yes" answer to question (d) was a mistake. As stated above, information submitted after the drawing cannot cure a defect. We find that BLM properly rejected appellant's application.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge.

